

BEWARE OF THE GRADUAL EROSION OF YOUR RIGHTS

Our next speaker is another very special person to me. His name is Fred Biery. And he's here with a special person. Marsha, please raise your hand. Marsha Biery. I am going to tell you why Fred is special. Fred and I go back to high school in San Antonio, Texas. Fred and I went to Thomas Jefferson High School in San Antonio and we were Class of '66. Fred was the Senior Class President and I was the Commander of the R.O.T.C. Cadet Corps. After we graduated, he went to Texas Lutheran College in Seguin, Texas, and I went to Texas A&M. He pursued law, and I pursued engineering. Other than our high school, we just really didn't have a whole lot in common. I didn't see any of him, and he didn't see any of me for a while.

Then came the occasion of our Tenth High School Reunion in 1976. That just happened to be the summer that I got fired because I was in transition, and I got an invitation to the reunion. I was dealing with a lot of fear and I was dealing with a loss of esteem, working through my mind. Trish and I were dealing with the fact that our income had suddenly been cut by two-thirds. So I decided not to go.

But I was out of the closet and I wanted to build some bridges -- as we know we had a judge talk about bridges earlier this week -- I went through my yearbook, and I picked out about 30 people that I thought I knew pretty well, that I liked or who were close friends. I wrote them all a letter and essentially it said I can't be at the reunion, and this is why. This is what I am going to through, this is what is happening. I wanted you to know what's happening, what the truth is.

Fred got one of those letters. Fred wrote me back very shortly afterwards and he said, "No problem. I am still your friend. If you come to San Antonio, give me a call and we'll have coffee and talk."

Trish has an annual get-together in San Antonio. I would go, and I would contact Fred first. Fred was a trial lawyer at this time, and I would have coffee in his office. He was very courteous, non-judgmental, very caring.

He was a life-preserver. He wasn't the only life-preserver. There were other life-preservers, like the women I told you all about in the League of Women Voters. Other life-preservers you heard about in some of my stories this week, and some more you are going to hear subsequent, but he was one of my life-preservers at that time.

He was elected to the County Court at Law. He was elected in 1979 in San Antonio and served until 1982 when he was elected to Judge of the District Court. During that time he was nominated and became known as the Outstanding Young Democrat of Bexar County, Texas, in 1978; Outstanding Young Lawyer, San Antonio, 1980; Distinguished Alumni Award, Texas Lutheran College; Board of Regents, same school; President, San Antonio Bar Association.

He now sits as a Justice of the 4th Court of Appeals in San Antonio, Texas.

You know what? He still talked to and befriended Phyllis Frye. The person who used to be Phillip Frye. The woman who used to be a man. The "no hair on the face" who used to have "hair on the face," you know, the whole nine yards. Whenever Trish and I were in town, even when he was on the Bench, I'd call and say, "We are in town." And he'd say, "Well, I am going to take a break at such and such a time. Come on by and we'll have coffee."

I remember in August of 1985, we were talking and he said, "Now I want you -- he handed me a yellow pad -- and he said, "I want you to write this date down." So, I wrote it down, and I said, "What's happening?" And it was June of 1986 -- he said, Well that is going to be the Thomas Jefferson Class of 1966 20th reunion and I want you to know the date so you can get it on your calender, so you can be there. And he said, "I am on the steering committee." So I started writing letters to the steering committee through Fred.

Fred essentially presented it and told them just what I told them in the letter. I wanted to come to the reunion because I am a member of that Class. I don't really particularly want to go there just for the purpose of making a statement: my being there is going to make a statement. I want to be there for the same reason that everybody else is there. I want to see some of my classmates and have a good time. And so this person, Fred, helped me with that bridge.

At that 20th reunion I was the subject of conversation, and I knew that going in. But there was a lot of nice people that I went to high school with who got over themselves and we had a good time. I remember, very interestingly, because whenever you go to reunions, they always do this thing where, okay, who's traveled the furthest? They give an award. Who's got the most children? They give an award. Who's this? Who's that? And, of course, they always say Who's changed the most? They didn't have that. But at the 25th reunion, they did and I got it. (Applause)

Fred Biery is a very, very special person to me. He has been a bridge, has been a friend and his spouse, Marsha, has also been a friend. They have had us in their homes. We've loved their children. And they're just good people. And so after his talk tonight and after the entertainment tonight, you want to meet them if you haven't already met them. Fred come on up, and while you're coming up I want you to know that you contributed a large part to my growing in self-esteem, and you have been a large part of who I am today and I love you for it, Fred.

I've told Fred to talk about what he wants. So look out. He's going to roast me. I introduce to you, the Honorable Fred Biery, Justice of the 4th Court of Appeals of Texas.



BY JUDGE BIERY:

It's very obvious that Phyllis invited all of you to stand up when Ray Hill got up, but not for me. But I thank Ray for getting up and leading the charge. I want to thank Phyllis for that wonderfully objective introduction. My mother would have been very happy to hear that. I'll go into some detail about Phyllis' and my history. Phyllis's father and my mother, 50 years ago, were in high school together in San Antonio, and so the family connections go back even farther than just Phyllis and me.

It's a pleasure to be in Houston this evening, and I am particularly honored to be a part of this first conference. And I am confident, along with all of you that it will continue to grow over the years as we participate in this together.

With deference to our first Republican President, the great emancipator, Abraham Lincoln, and with apologies to our Republican friends who are here this evening, I am glad that I am here in Houston this week instead of last week when George and Dan were in town. Last week, you know, we heard a lot about the President's Secret Economic Plan. In 1988 he asked us to read his lips; last week he asked us to read his mind.

Now, I do need to tell you, and those of you who are not from Houston can have some of the local people explain this to you if need be, but I do need to tell you that there's been a leak in terms of what the President's Secret Economic Tax Plan is. It's really a tax credit for all of the debutante parties thrown in River Oaks. In observing the makeup of the Convention delegates last week on television, I was particularly impressed with, and I almost mentioned to a Republican acquaintance of mine about the homogenous character of the Convention delegates. But knowing some of their phobias, I decided that that word might be misunderstood, and I decided not to do that.

Before we proceed any further, I do want to observe -- particularly those of you that had an opportunity to see the evening news about what is going on in Somalia and other places in the world -- I want to observe how fortunate we are this evening to have these bountiful tables. And in that spirit I want to take an opportunity for all of us to join in thanking those who have labored to present and prepare this food and beverage for us this evening. (Applause)

Earlier I said I wanted to thank Phyllis for inviting me, but once I found out that I had to follow Judge Alice Oliver-Parrot and now this evening Ray Hill on the podium, I am not so sure that those thanks are as generous as they might have otherwise have been. Perhaps, next time I might get to go first, Phyllis, and you can have the real star speakers who have made Supreme Court history follow me.

In thinking about these remarks, I had given some consideration to turning this particular part of the program into a roast to Phyllis and seeking Ray Hill's help in doing that, but knowing that Phyllis has control of the microphone, as Phyllis most often has control of everything, I decided that wisdom was the better part of valor and perhaps we would use some other conceptual framework for these remarks.

Another option, of course, was to lecture you on some narrow and archaic points of appellate law, but knowing that the hour would be getting late, and knowing that many of you have rooms here in this hotel, I decided that that would not be a very good idea, either.

Ultimately I decided that I did want to share some thoughts with you and among us about some lessons that all of us have learned about living and from history. And how those lessons interrelate

to the legal system that we're talking about this week, but more importantly to the common bonds of our humanity. Perhaps one of the most important lessons we've learned as human beings is that -- and particularly those of us who have young children at this stage of our lives, and we get to observe that even more closely -- it takes about two years for human beings to learn how to talk; and then it takes the rest of our lives to learn how to shut up. And, so, as Henry VIII told each of his wives, "I will keep you only a short time."

In terms of remembering and reminding myself to keep on learning those lessons, one of my best teachers is our 9 year-old daughter. A classic example of that is two summers ago we took some people tubing on the Guadalupe River, north of San Antonio. And trying to be the Good Samaritan and take my pickup truck down close to the river to pick them up, I got my pickup truck stuck. Rather than immediately calling a professional tow-truck driver, a friend of mine and I spent the entire day trying to get the truck out ourselves, with no success.

The following Monday, the next day, we again spent the entire day trying to do that. In the meantime, prior to that, I had told my 9 year-old daughter, who at that time was 7, that I had learned my lesson about not getting my truck too close to the river and getting stuck in the gravel bar. And so having spent two days now in an attempt to save \$50, and still unsuccessful in getting the truck out, I finally parted with my \$50, hired a professional and succeeded in getting the truck out of the river before it floated on down.

That evening, unbeknownst to my daughter that I had gone through all this, she got home from school and said, "Well, Daddy, did you learn any lessons today?" And of course the next time that happens, I won't wait two days to call the professional.

Even though I have learned that lesson about Phyllis having control of this microphone, as she has control of most things, I can't resist the opportunity in my brief time here, to share some of our background. As I mentioned, it was some 50 years ago that our parents were in school together and 29 years ago today, give or take a few days, we began our sophomore year in high school in 1963. Well during that time, in addition to the things that Phyllis has told you about, I was trying to play competitive varsity basketball. Unbeknownst to me, I was becoming the role model for this new movie, called *White Men Can't Jump*. At the same time that I was playing some basketball, Phyllis was doing the Cadet Colonel role in the R.O.T.C.

In addition to that, Phyllis was playing competitive baseball in those years prior to high school, and all of us were most impressed with Phyllis' ability to throw both left- and right-handed. When we observed to Phyllis how impressive this was that she could throw both left and right-handed, she responded, "Well, you know, I've been amphibious all of my life."

This is perhaps something that you non-Texans might not understand, and so I'll let some of our Texas friends explain it to you. But right at that very moment we all knew that Phyllis was headed to Texas A&M.

She did go on to A&M and to become the first woman member of the Corps. Now Phyllis was the only one who knew that she was the first woman member of the Corps, but she was.

In recent years, as we have reestablished our friendship, Phyllis and I have developed a common interest in gardening and Phyllis began that hobby some years before I did. She has taught me a number of lessons about gardening -- one of which is composting. Those of you who are involved in composting know that when you get all of this material in this big pile, it really doesn't do any good unless regularly and from time to time you take a rake or a pitch fork and you turn it over. You let in new air and you let in new sunlight, but most importantly, you let out the old gases. Now there is some people that think that same theory would apply appropriately to the White House in November. If you don't let out the old gases, whether it be the compost pile or the White House, we all know that you get a big pile of you-know-what.

Another good thing about gardening is that it keeps me as a judge from becoming like the Republican judge who was chastising a homeless person for not working. And after hearing this lecture, the homeless person said, "Judge, I do work. I work every day. I go out and I pick up aluminum cans and I pick up other salvageable materials to be able to go and buy the food that I need. And, Judge, besides, that" -- and he held up his hands that were calloused and gnarled from doing this hard labor everyday, and said, "Judge, if I didn't work, my hands would look like yours."

We're here this evening and for this seminar this week, focusing on some legal issues which have particular relevance to a particular group of American society. It is tragically ironic that notwithstanding of 200 years of lofty rhetoric about equality and justice, there are still those who would hypocritically deny those promises to people of color, to women, or to anyone who does not fit proscribed societal norms.

Now, when observing this particular phenomenon, and I know we have some good friends' here from up in the Northeast in the Ivy League -- but I haven't spent a lot of time up there -- but my understanding is that when people in the Ivy League schools or English colleagues observe that type of hypocrisy, they exclaim, "How incredible." Well, here in Texas, we have some barnyard vernacular expressions that also equally apply.

I want to suggest to you that most people simply want the law to treat them fairly. And as Ray Hill alluded to in his remarks, most people other than that simply want the law to leave them

alone. Even though we have evolved beyond the point of legally wringing wealth from the enslavement of other peoples' toil and the birth accident of having dark skin mean that one is counted as only three-fifths of a human being, it is still an ongoing journey of never ending vigilance to ensure that the legal system is staffed by people committed to the equal application of the social contract to all of our citizens. In listening to Judge Alice Oliver-Parrot this afternoon, for those of you who were there then and who are here now, it was almost as if she and I had had an opportunity to compare notes on some of the historical lessons of which we need to be reminded today.

Lest we be tempted to think it can't happen in the twentieth century, I want to commend to your reading a new book. It's entitled Hitler's Justice, The Courts of the Third Reich. During the 12 years of Hitler's reign, there were between 40 and 50,000 death sentences meted out by the German courts. During that same time, the Fascist Italian Courts meted out 29 death sentences and the Japanese two. The German courts spread Orwellian absurdities. When an accused privately ridiculed Gerbles and Goering, a plea that this was not made in public was reasoned by the court as, quote, 'every political remark must be regarded as public in principal.' In 1943, a Dutch pianist named Karl Critten dining at the house of a friend, called Hitler insane. And unbeknownst to Critten, the friend was an ardent Nazi. Again the decree was death. The Court twisted a private dinner remark as a public outcry because, quote, 'true Germans would report them to the authorities, for every political remark represents a part of the fundamental political thought of the nation.'

Depending on who was accused, on the other hand, murder could become self-defense. For if you were a storm trooper in 1934 and you killed a sailor in a drunken brawl, the Supreme Court of Germany could order a reversal because the Commander of the storm troopers was quote, 'not only authorized, entitled and obliged to defend the prestige and the interest of the power vested in him.'

There is also an unmistakable anti-semitic tone to these decisions of that time. In 1930, a Jewish landlord was called a swine several times by his tenant. When the landlord of Jewish extraction sought to evict the tenant because of this kind of behavior, the Court refused, quote, 'Despite his German citizenship, referring to the Jewish landlord, the Plaintiff is not one popularly connoted by the word German.' How simple it would be to substitute the word Jew with the word transgender, and to substitute the word American for the word German.

If the nation's general welfare is dependent upon its system of laws, then we can learn from history. The Weimar Republic many saw as a free and open society. And yet while it seems preposterous to imagine that a Nazi regime could exist in this country today, we need to recall that the seeds of the subsequent brutal tyranny were often planted by the Weimar judges.

It is the gradual erosion of rights that causes concern and demands that vigilance of which I spoke earlier. When judges are selected not for their ability to dispense justice, but for passing whatever politically correct litanous test exists at the time, when habeas corpus is maimed by judicial decree and legislative fiat, when the jury system becomes secondary to expediency, and, as they say at least in the Texas courts, 'moving the docket,' then justice becomes a numbers game. Indeed it was a judge of the Third Reich who opted for the greatest possible fairness, and speed at the lowest possible cost.

Rather, I suggest to you that we must have judges who aspire and adhere to the Socratic ideal: To hear courteously, to answer wisely, to consider soberly and to decide impartially. And I would add, judges who have the courage to change the Dred Scott decision and to change Plessy versus Ferguson. We need advocates like Phyllis Frye and others of you in this room who are lawyers of the bar with the will and the creativity to rock the boat and to make us rethink old stereotypes.

The second publication I would commend to you is the fall 1991 edition of Barrister magazine, and in it you will find an article entitled, "Handling Hate: The Laws' Failure." After recounting recent and heinous conduct of such groups as the Klu Klux Klan and the White Resistance in the United States, not in Germany, and after recounting the criminal and civil damage responses of the legal system, we learn that the force of law alone cannot eliminate bigotry. By its very nature, the law can often times only react after the damage has been done.

I suggest that because we are dealing with a society made up of imperfect human beings, the real challenge is to change hearts and minds. Even as we are ourselves continue to learn lessons, we also can be teachers of lessons, and we can help break down the barriers of hate and misunderstanding.

Perhaps an early and very simple refresher lesson is one common to all the world's great religions. It's called The Golden Rule. Now some Republicans think that that means whoever has the gold, rules. But in truth and in fact it means to treat others simply as we'd like to be treated ourselves. Our goal should be peace among the diverse groups of this society and a fair part of the American dream for every American, no matter what they are.

Allow me to preface my closing remarks because I know you want to get on with the real entertainment of the evening, but I want to preface these closing remarks with a few thoughts about humility. Those of you who are politically active here in Texas know that I am one who has learned many lessons about humility. After spending many months campaigning across the State of Texas, and spending about \$400,000 -- fortunately, none of which was my own -- a fellow by the name of Gene Kelley simply put his name on the ballot, did nothing else and won an election against me after all of that effort. He having done nothing, simply because of that

familiar name, Gene Kelley, won. Another lesson I learned from that besides humility is that if he runs against me again, I am changing my name to Fred Astaire, instead of Fred Biery. (Applause)

But what I want to say in closing is something about Phyllis, and I must admit that it may tempt Phyllis to forget to be humble. But Ray and I and all of us who know Phyllis know that that shouldn't happen because she really does have a lot to be humble about. Having said that, Phyllis, let me conclude by thanking Phyllis for all of us for having brought us together this week and this evening for this great occasion. But more importantly, let us thank Phyllis for being the kind of advocate and compassionate human being who is an example to us all of how to win the hearts and minds.

Notwithstanding our blemishes as a nation, we cannot deny its idealism nor its promises. Fortunately throughout our history, not only of this country but of other countries, there have been what I like to call peaceful rebels, like Ghandi and Martin Luther King and Desmond TuTu, who have been willing to challenge the establishment, to follow the road less traveled and to make more real the promises of equality and freedom and to lead us in the uplifting of the human spirit. It would, in terms of employment matters and family life, certainly have been much easier for Phyllis Frye to conform. But because she too was willing to take a more difficult path, I would respectfully add to that list of peaceful rebels the name of Phyllis Randolph Frye. She helps us, to remind us, of the greater purposes of life and the greater challenges of life. And, who because of her openness and honesty and compassion reminds us of the lesson of the story of the Velveteen Rabbit, that of becoming real in the highest and best sense of the word.

Thank you for allowing me this opportunity, and may we all continue as fellow human beings to continue to grow in wisdom and in grace. Thank you.